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TRENDS

Haiti's Truth and Justice Commission

by Fanny Benedetti*

On February 5, 1996, the president of the Haitian National Truth and Justice Commission (Commission) delivered its final report to Haitian president Jean Bertrand Aristide. The Commission was created on December 1994 by an executive order issued by Aristide. On March 28, 1995, the Commission announced as its mandate "to globally establish the truth concerning the most serious Human Rights violations perpetrated between September 29, 1991 and October 15, 1994, inside and outside the country and to help to the reconciliation of all Haitians without any prejudice against seeking legal action based on these violations."

The Commission's initial goal was to obtain as much evidence as possible by interviewing citizens about Human Rights

observers had expected. A strong willingness to testify about human rights abuses was the rule rather than the exception even though a significant number of victims expressed anxiety about the presence of past perpetrators of human rights violations in the surrounding areas. In a period of eight to ten weeks, the



Haitian Prime Minister Claudette Werleigh (far left), President Jean-Bertrand Aristide (center), Mildred Trouillot, Aristide's wife (far right), and Justice Minister René Magloire (behind President Aristide) attend ceremony on February 5, 1996, at which the Haitian Truth and Justice Commission officially presented its report.

Photo courtesy of Fanny Benedetti

collected was considered germane whenever it was supported by *sufficient* evidence, that is, there were more facts supporting it than against it. Two higher standards were also established. Evidence required for certain findings had to be at least *substantial* or *overwhelming*. If the evidence gathered removed any possibility of a contradictory finding, then it met the standard of overwhelming proof. If the evidence strongly supported a finding, then it was deemed substantial. These standards applied whenever persons alleged to have committed the violations were identified by name. This was a very sensitive issue because the Commission interpreted its mandate as requiring it to identify the alleged violators. Although perpetrators were identified by thousands of victims and witnesses, the Commission faced difficulties because time constraints and limited resources would not permit a more thorough investigation of the accused. In some cases, the standard of substantial or overwhelming proof was met when thorough analysis of the collected data revealed that a particular perpetrator was mentioned with high frequency as involved in a certain type of human rights violation. For example, in some rural areas, perpetrators frequently operated in a particular locality and their acts were witnessed by most members of the community.

After collecting testimonies and conducting interviews, the investigating units began to examine the data before submitting it for entry into a newly created database. This process was then followed by a more thorough analysis, at the regional level, of the targets, planners, and patterns of repression. At the same time, the Commission also carried out special investigations regarding specific forms of repression, such as sexual violence toward women and the repression of the press.

The Commission sought to investigate acts of political repression in a broad manner. Unlike other truth commissions in the past, such as the UN Commission for El Salvador which focused on a limited number of prominent cases that had a

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The Commission's toughest challenge was to guarantee the security of victims because the fear of reprisal for testifying was a major concern echoed by several human rights organizations.

violations that had occurred during the period at issue. The Commission based its findings on testimony gathered throughout the country by forty Haitian and foreign human rights investigators during the summer of 1995. The Commission's toughest challenge was to guarantee the security of victims and investigators and the confidentiality of those testifying because the fear of reprisal for testifying was a major concern echoed by several human rights organizations. The Commission, therefore, chose discretion over publicity and abandoned the idea of a media campaign such as the one carried out by the UN Truth Commission for El Salvador, was therefore abandoned. Information of the investigation, however, was made available to the numerous grassroots organizations that held the confidence of the population at large. These groups reacted promptly and efficiently in notifying the populace of the presence of the Commission in various localities. The results were greater than many

Commission received more than seven thousand complaints. The investigators documented violations on detailed questionnaires. The Commission also obtained information from secondary sources such as local and international human rights organizations, including the United Nations/ Organization of American States Civil Mission in Haiti. The Commission chose to use these secondary sources mainly to verify the information collected from primary sources.

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The question of sources is directly related to the issue of the proper standard of proof. The Commission considered three standards. The information

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significant impact on society in general, the Haitian Commission's goal was to paint a general portrait of the repression. The methods of the UN Commission for El Salvador allowed for fewer, but more thorough, investigations which allowed the UN Commission to publish the names of those who engaged in human rights violations. One reason for this was that the UN Commission for El Salvador was inves-

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tigating a twelve-year period of repression, and therefore had to focus on a select group of cases. By contrast, the Haitian Commission's mandate covered only a three year period (September 1991 — October 1994) and, therefore, the goal of the investigation was to be as extensive and inclusive as possible.

Reconciliation is mentioned twice in the preamble of the March 1995 executive order, which established the Commission, and the theme also appears in Article 2 of the Commission's mandate. Reconciliation is important in understanding the political context in which the Commission was created. The Commission does not regard itself as the primary instrument to carry out national reconciliation, but rather expects reconciliation to occur once the truth about past human rights violations has been revealed. The political goal of reconciliation inspires the Commission as a "central aspect of its mandate," and directly influences the recommendations made to the Haitian government.

The Commission, however, faced political constraints, in part, because it was created during a period of transition where the Aristide government was characterized as being weak. At the local level, some of these basic challenges included public pressure for justice from numerous grassroots organizations; the specter of mob inspired "street justice"; and the prevailing public distrust of government. Such challenges added to the politically charged atmosphere which surrounded not only the Commission but also the July 1995 legislative elections and the December 1995 presidential election.

The findings of truth commissions in other countries have proved that exposing the truth about human rights abuses in a particular country and regime does not

worsen the existing political situation or further social disturbances. Some findings, however, may further upset a politically fragile situation. The publication of names, for example, requires serious consideration of all possible consequences. The UN Commission for El Salvador assumed that a thorough investigation of the most egregious acts of repression required the publication of names because of their distrust of El Salvador's judicial system. The Commission in Haiti, in contrast, did not focus necessarily on the key leaders and supporters of the repression. It focused instead on recommending reform measures to be taken by the Haitian government with regard to the judicial system and other state institutions, in addition to identifying the authors of violations and their victims. In this respect, the Commission was the first to have the word "justice" included in its official title. By comparison, the UN Commission in El Salvador was less concerned with studying and proposing judicial reform in part, because reforms had been negotiated by the parties to the country's peace accords. It is important to remember that neither commission was granted prosecutorial nor judicial powers. Some scholars have argued, however, that the UN Commission in El Salvador, by publicly naming the perpetrators of human rights violations, had come close to

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In the past, successful truth commissions have been lauded primarily for telling the truth. New discoveries did not make these commissions a success, since most instances of political repression were generally well known among the citizens of a given country and by the international media. The commissions had an impact because they officially acknowledged the truth. "To transform knowledge to acknowledgment," is a step widely considered to be a necessary first step toward national reconciliation because of its psychological impact.

Other goals commonly associated with earlier truth commission reports include reparation to the victims, the prosecution

of the violators, the implementation of punishment measures, and the reform of the judiciary. All of these ambitious goals were specifically mentioned in the mandate of the Haitian Truth and Justice Commission. The implementation of its recommendations is now the responsibility of the post-Aristide government. The government also is compelled, under Aristide's executive order which created the Commission, to publish the Commission's report. Publication is the only way to achieve the goal of the Commission — to tell the truth about human rights abuse which occurred from 1991 to 1994.

The next major step proposed for Haiti will be the establishment of a commission for reparations to the victims. The Truth and Justice Commission recommended its creation in light of the repression's devastating economic effect on Haitian citizens. This new initiative may, ultimately, be one of the key achievements of the Truth and Justice Commission. ☺

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Haiti Report Available

The Center for Human Rights and Humanitarian Law has developed an analysis of human rights obligations established in the Haitian Constitution and international human rights treaties ratified by Haiti. The paper, prepared in anticipation of a human rights training program for the newly elected Parliament of Haiti, also addresses human rights concerns in the Haitian context, including: freedom from torture, personal liberty, due process of law, effective remedy, participation in government, equality, State responsibility during states of emergency, and amnesty laws. In addition, the paper suggests constitutional amendments and new legislation to bring domestic law into compliance with international obligations.

This paper, the result of a USAID grant received by the Parliamentary Human Rights Foundation, is available at a cost of \$5.00 (22 pages). For further information, please contact the Center for Human Rights and Humanitarian Law.